



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-845]

Certain Products Containing Interactive Program Guide and Parental Control Technology

Notice of the Commission's Final Determination Finding no Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 6, 2012, based on a complaint filed by Rovi Corporation; Rovi Guides, Inc.; Rovi Technologies Corporation; Starsight Telecast, Inc.; United Video Properties, Inc.; and Index Systems, Inc. (collectively, “Complainants”). 77 FR 33487-88. The notice of investigation named LG Electronics, Inc.; LG Electronics U.S.A., Inc. (collectively, “LGE”); Mitsubishi Electric Corp.; Mitsubishi Electric US Holdings, Inc.; Mitsubishi Electric and Electronics USA, Inc.; Mitsubishi Electric Visual Solutions America, Inc.; Mitsubishi Digital Electronics America, Inc. (collectively, “Mitsubishi”); Netflix Inc. (“Netflix”); Roku, Inc. (“Roku”); and Vizio, Inc. (“Vizio”) as respondents. *Id.* The Office of Unfair Import Investigations did not participate in this investigation.

Originally, Complainants asserted numerous claims from seven patents against various respondents. Complainants later moved to terminate the investigation as to three of the seven patents, as to certain claims of one of the remaining four patents, and as to respondents LGE, Mitsubishi, and Vizio. Order No. 9 (Sept. 4, 2012), *not reviewed*, Oct. 2, 2012; Order No 16 (Nov. 6, 2012), *not reviewed*, December 7, 2012; Order Nos. 17 (Dec. 19, 2012) and 19 (Dec. 20, 2012), *not reviewed*, January 18, 2013; Order No. 21 (Jan. 22, 2013), *not reviewed* Feb. 13, 2013; Order Nos. 34 (Feb. 27, 2013) and 36 (Mar. 1, 2013), *not reviewed* (Mar. 22, 2013). Netflix and Roku (“Respondents”) remain in the investigation, as well as claims 1, 6, 13, and 17 of U.S. Patent No. 6,898,762 (“the ’762 patent”), claims 13-20 of U.S. Patent No. 7,065,709 (“the ’709 patent”); claims 1-3, 10, and 11 of U.S. Patent No. 7,103,906 (“the ’906 patent”); and claims 1, 2, 4, 6, 14, 15, 17, and 19 of U.S. Patent No. 8,112,776 (“the ’776 patent”).

On June 7, 2013, the presiding ALJ issued his final initial determination (“ID”), finding no violation of section 337. Specifically, the ALJ found that none of the accused products met the importation requirement of section 337. While the ALJ found that his importation finding was dispositive, he made additional findings in the event that the Commission determined that the importation requirement was met. The ALJ found that no party infringed any of the four asserted patents. He also found that the ‘776 patent is invalid as anticipated and obvious, but that Respondents had failed to show that the other three asserted patents were invalid. The ALJ found a domestic industry for articles protected by each of the patents-in-suit, but no domestic industry based on substantial investment in licensing the asserted patents. The ALJ also rejected Respondents’ patent misuse, implied license, and patent exhaustion defenses.

On June 24, 2013, Complainants filed a petition for review challenging the ALJ’s findings that the importation requirement is not met, that Netflix does not induce infringement, and that the economic prong of the domestic industry is not met by Complainants’ licensing activity. That same day, Respondents filed a joint contingent petition for review arguing additional bases for finding no violation. On July 2, 2013, the parties filed oppositions to each other’s petitions.

On August 9, 2013, the Commission determined to review the ID in its entirety. 78 *FR* 49766-67 (Aug. 15, 2013). The Commission requested written submissions from the parties on seven issues. It also requested submissions on remedy, bonding, and the public interest from the parties and the public. The Commission only received submissions from the Complainants and Respondents.

Having examined the record of this investigation, including the ALJ's final ID and the submissions from the parties, the Commission has determined that Complainants have not proven a violation of section 337. The Commission affirms with modified reasoning the ALJ's finding that the importation requirement is not met for all of the asserted patents. The Commission affirms with modified reasoning the ALJ's finding that the '762, '709, and '906 patents are valid but not infringed, and that the '776 patent is invalid and not infringed. The Commission also determines to modify the ALJ's claim construction regarding the order of steps of the asserted claims of the '709 patent, and, under the modified construction, reverses the ALJ's finding that Complainants have shown that the technical prong of the domestic industry requirement has been met for the '709 patent. The Commission also affirms the ALJ's findings that Complainants have shown that a domestic industry exists for the '762, '906, and '776 patents with respect to articles protected by the patents based on their investments in plant and equipment, labor and capital, research and development, and exploitation of engineering, as set forth in the ID. Accordingly, the Commission need not reach the issue of whether Complainants have also shown that a domestic industry exists based on substantial investments in licensing, and the Commission takes no position on the issue. The Commission also corrects a typographical error on page 49 of the ID. The citation CX-4481C at .10 is corrected to be CX-4145C at .9. All other findings in the ID that are consistent with the Commission's determinations are affirmed. A Commission Opinion will issue shortly.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45, .49, and .50 of the Commission's Rules of Practice and Procedure (19 CFR 210.45, .49. and .50).

By order of the Commission.

Issued: November 1, 2013.

Lisa R. Barton,
Acting Secretary to the Commission.

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